The New Rules

In the following pages, we address each of the new rules in sequence.

Subpart A - Scope and Authority

§ 22.1 Basis and purpose.

New § 22.1 replaces old § 22.0(a) and (b) and is required by 5 U.S.C. §553(c) whenever an entire rule part is established or rewritten. We adopt it as proposed.

§ 22.3 Authorization required.

New § 22.3(a) tracks the language in Sections 301, 308, and 309 of the Act. See 47 U.S.C. §§301, 308, and 309. Pactel Paging and twenty other Part 22 licensees joined together to file comments and reply comments. We refer to this group herein as the "Joint Commenters." Joint Commenters propose that the word "legal" be added to the second sentence of this rule section, indicating that applicants must be qualified in regard to citizenship, character, financial, technical, "legal" and other criteria. We disagree. This word is not in the language of the Act and is not necessary in this rule section.

§ 22.5 Citizenship.

This rule retains the language in old § 22.4 which implements Section 310 of the Act (47 U.S.C. §310). Joint Commenters suggest adding a paragraph under new § 22.5(b) indicating that the Commission does not grant authorizations in the Public Mobile Service to any partnership that has an alien general partner or any limited partnership in which an alien limited partner is not adequately insulated from participation in the management or control of the entity. We reject this suggestion. Commission precedents are clear that the alien proscriptions of Section 310 apply to partnerships. See Moving Phones Partnership L.P. v. FCC, 998 F.2d 1051 (D.C. Cir. 1993). See also Wilner & Scheiner, 103 FCC 2d 511 (1985), modified on recon. 1 FCC Rcd 12 (1986). Therefore, we need not incorporate the suggested language into the rule.

§ 22.7 General eligibility.

The proposed rule was intended to restate old § 22.4(a). Joint Commenters, noting that the proposed rule states that applications may be granted only if there are "sufficient" channel assignments available to enable the applicant to render a satisfactory service, assert that this language appears to introduce a new legal standard not reflected in existing rules or case law. Furthermore, they are concerned that the phrase "satisfactory service" could be interpreted in various ways and could result in litigation.

First, we replaced the phrase "eligible to apply for authorizations" with "eligible to hold authorizations," because an applicant could be found ineligible after applying. Second, the phrase "satisfactory service" appears in old § 22.4(a)(2) and thus would not constitute a substantive change. We agree, however, that this phrase and the word "sufficient" could both be subject to misinterpretation. Moreover, upon reflection, we realize that the issue of spectrum availability is misplaced in this section. The purpose of new § 22.7 is to state general qualifications each applicant must have (e.g., it must be a common carrier) to be eligible to hold an authorization issued under this part. The matters of availability of spectrum for a proposed facility, and whether grant of an authorization for that facility would serve the public interest, convenience or necessity are important, but they do not reflect upon an applicant's basic qualifications or eligibilty to hold a license. Accordingly, we removed these two concepts from this rule section. We note that the latter consideration concerning the public interest is already stated in new § 22.132(a)(1), which is the appropriate location for it. The effect of the former consideration was to indicate that the Commission would not grant an application if there was no available channel. We moved this provision to new § 22.128.

§ 22.99 Definitions.

In the NPRM, we proposed to update, add, and remove definitions for Part 22. We intentionally numbered this section as § 22.99 so that it would always be the last section in Subpart A, and thus be easy to find. We emphasize that the definitions in this section serve only to explain the meaning of terms as we use them in Part 22. We have endeavored to avoid, as much as possible, embedding restrictions or technical specifications within the definitions. This definitions section is intended to be an informative rule section. The comments suggest additions and changes to some of our proposed definitions. Our decisions with regard to these suggestions follow.

Airborne station. GTE Service Corp. (GTE) argues that the proposed definition, which refers to use on aircraft in flight, could be interpreted as making use in aircraft on the ground unauthorized. It asserts that there is no rationale supporting such a limitation and it therefore recommends deleting the phrase "in flight."

The Public Mobile Services are land mobile services, and all authorized public mobile stations, including airborne stations, may be used on the

ground. The characteristic of airborne mobile stations that distinguishes them from all other public mobile stations is that they are also authorized and designed to be used on aircraft while in flight. By contrast, use of cellular mobile stations on aircraft in flight is prohibited. To remove the phrase "in flight" as GTE suggests would strip the definition of its essential meaning, because all public mobile stations, including even cellular mobile stations, are authorized to be used on an aircraft while it is on the ground. Nevertheless, to eliminate any possible misinterpretation we added the phrase "or on the ground" to the definition.

Assignment of authorization. McCaw Cellular Communications, Inc. (McCaw), Metrocall of Delaware, Inc. (Metrocall), Joint Commenters, and BellSouth Corp. and BellSouth Enterprises, Inc. (BellSouth) suggested that the definition of "assignment of authorization" should not include "transfer of control" because they assert that these are two legally distinct transactions.

We agree. We use the term "assignment of authorization" generally to refer to the transfer of a Public Mobile Services authorization from one party to another. In this regard, we note that there are "full" assignments, where the licensee of a facility changes, and "partial" assignments, where a licensee transfers the authorization for some, but not all, of the facilities of a station. In the case of a full assignment, we issue a new authorization bearing the same call sign, but the name of the new licensee (the assignee). In the case of a partial assignment, we issue a new authorization to the assignee bearing a different call sign, and the assignor retains the existing call sign. We use the term "transfer of control" to refer only to the transfer of a Public Mobile Services authorization by transfer of control (such as by the sale of stock or other ownership) of the licensee. An assignment of authorization occurs when the authorization moves from one entity to another. In a transfer of control, the licensee remains the same, but the owners of the licensee change. See Stephen Sewell, Assignments and Transfers of Control of FCC Authorizations under § 310(d) of the Communications Act of 1934, 43 Fed. Comm. Law Journal 277, 285 (1991).

Authorization. The Joint Commenters point out that the proposed definition of the term "authorization" is limited to a written instrument to operate a station. They suggest that the definition be revised to indicate that the Commission also gives oral authority, and that authorizations convey authority to construct a station.

Normally, all Public Mobile Services authorizations are in written form, and the proposed definition reflects this. However, we agree that the Act does not restrict authorizations to written instruments and that on some occasions we have issued oral authorizations to operate Public Mobile Services stations. Therefore, we are revising the definition of "authorization" to reflect this fact. In regard to construction authority, we note that although Public Mobile Services authorizations convey authority to construct, our rules generally allow station construction prior to the issuance of an authorization (see new § 22.143). Furthermore, if we were to add "authority to construct" to our definition of the term "authorization" as Joint Commenters suggest, others might infer that an authorization must be issued prior to construction. Section 301 of the Act (47 U.S.C. §301) mandates that a license is necessary to "use" or "operate" stations, including Public Mobile Services stations, but does not require such for construction. Section 319 of the Act (47 U.S.C. §319) mandates generally that a construction permit must precede the issuance of a license, but Subsection (d) of that section specifically exempts stations licensed to common carriers from that requirement, unless the Commission determines that the public interest, convenience and necessity would be served by requiring construction permits. In view of these considerations, we find that it is unnecessary and potentially confusing to add a reference to construction authority to our definition of "authorization."

Authorized bandwidth. Our proposed definition for the term "authorized bandwidth" reflects the fact that, in the Cellular Radiotelephone Service and the Air-ground Radiotelephone Service, channels are assigned in blocks rather than individually. Our primary concern in limiting emissions to prevent adjacent channel interference is with emissions that fall outside of the channel for stations that are assigned spectrum on a channel-by-channel basis, and with emissions that fall outside the channel block, for stations that are assigned spectrum on that basis. Within such a block assignment, if adjacent channel interference occurs, the authorized station interferes with itself, a situation the licensee could usually be expected to correct without our intervention. For equipment authorization purposes, however, we generally establish limits for emissions falling outside of the normal bandwidth of the emission, because a particular type of transmitter might be used with a single channel assignment or a block assignment. Thus we need a term to define "the assigned channel or channel block." However, the term "authorized bandwidth" is already used in other parts of our rules (see, e.g., § 5.103 of our rules), and in these other parts it usually refers to the width of the authorized

emission, not the width of the spectrum which is assigned. To avoid confusion this may cause, we added the term **"authorized spectrum"** with the definition we proposed for "authorized bandwidth." In addition, we retain the term "authorized bandwidth," but define it to mean the same thing that it usually means in other parts of our rules.

Base transmitter. Arthur K. Peters, Consulting Engineers (AK Peters) suggests that the definition of "base transmitters" be expanded to include the provision of service to pagers because they are clearly served by base transmitters. We agree that a reference to pagers is appropriate.

Cellular Geographic Service Area (CGSA) and Extensions. GTE proposes that we add our definitions of these Cellular Radiotelephone Service terms to this section. We agree that general definitions of these terms may frequently be sought by persons concerned with cellular matters and that adding them to this section is appropriate. The general definitions we are adding also contain references to the rule sections in Subpart H where more detailed explanations and additional requirements may be found.

Cellular System. Joint Commenters argue that the proposed definition does not distinguish a cellular system from other personal communications systems. It recommends that we reference the specific frequency ranges allocated to the Cellular Radiotelephone Service. We disagree. The frequency ranges in which a communications system operates do not make it a cellular system. A cellular system could operate just as well in many different frequency ranges. Likewise, communications systems that are not cellular systems could operate in the spectrum allocated to the Cellular Radiotelephone Service (see new § 22.901(d)). The distinguishing characteristics of a cellular system are related to its engineering design or "architecture," not the portion of the spectrum in which it operates. Our definition incorporates the principal cellular design characteristics including high-capacity, wide-area, low transmitting power, automatic hand-off and most importantly, frequency reuse.

Channel. In the NPRM, we proposed to define channel as "[t]he portion of the electromagnetic spectrum assigned by the Commission for one emission. However, in certain circumstances, more than one emission may be transmitted on a channel. See, for example, § 22.161 and § 22.757, et seq." BellSouth asserts that the reference to § 22.161 is unclear, and the reference to § 22.757 and the sections following is incorrect. It also recommends that we include an additional sentence that clarifies that each half of a channel pair is itself a channel, but that the pair is assigned as a unit. We agree with this latter point and added a sentence regarding channels assigned on a paired basis. We also deleted the reference to § 22.757, et seq. because BETRS is authorized as a single emission per channel (although that single emission is a multiplexed digital emission carrying up to four audio channels). However, we retained the reference to § 22.161, which is the rule that allows stations using amplitude compandored single sideband (ASSB) to transmit several separate emissions within a single channel.

Dead spots. The NPRM defined dead spots as "[s]mall areas within a protected service area where the field strength is lower than the minimum level for reliable service." The Joint Commenters suggest that we eliminate the word "protected" from the definition as unnecessary. We agree.

Dispatch service. Bell Atlantic Companies (Bell Atlantic), GTE, and others recommend that we retain the definition of dispatch service that is already in our rules. In particular, GTE suggests that we codify the definition of dispatch service adopted in GEN Docket No. 87-390. We agree. The definition of dispatch service in the old rules was inadvertently omitted in the NPRM.

Equivalent isotropically radiated power (EIRP). The NPRM defines EIRP of a transmitter as the power at the input terminals of a reference isotropic radiator that would produce the same maximum field intensity. BellSouth recommends that an additional sentence be added which explains that an isotropic radiator is a theoretical lossless point source of radiation with unity gain in all directions. We agree that the definition of EIRP is improved by adding this sentence. We also added the traditional wording that explains how EIRP may be calculated.

Fill-in transmitter. McCaw and Joint Commenters state that maintaining two different definitions of "fill-in transmitter," one for the Cellular Radiotelephone Service and the other for the Paging and Radiotelephone Service, is confusing. Joint Commenters recommend that cellular system expansion transmitters be called "build-out transmitters" instead of fill-in transmitters and be defined separately. With regard to the Paging and Radiotelephone Service, Bell Atlantic and United States Telephone Association (USTA) suggest that the definition should state that a fill-in transmitter may not extend the service area or interfering contour beyond previously authorized contours.

We agree with McCaw and Joint Commenters that current use of the term "fill-in transmitter" to mean different things in different services is confusing. The traditional meaning of this term is a transmitter that is added in a paging system to improve reception in a dead spot. Over the years, however, the term "fill-in transmitter" came to be used to describe transmitters added to a paging system to expand the coverage of that system, provided that there was a significant overlap (e.g., 50%) with existing service areas. The reason this occurred is that our rules have provided that applications for fill-in transmitters did not have to contain traffic loading studies or other additional channel justification (see old § 22.16(e)). This created an incentive to call system expansion transmitters "fill-in transmitters" in order to avoid the additional channel showings. Later, in the cellular service, it became common to refer to the process of adding cell sites within a market as "filling in" that market. This usage further evolved into our definition and use of the term "Five year fill-in period" to describe the period during which an initial cellular licensee has an exclusive right to expand its system within the market.

We are defining the term "fill-in transmitter" to have its original meaning. We believe that removal of the requirement for traffic loading studies and clarification of the rules that govern assignment of additional channels will reduce the tendency to misuse the term "fill-in transmitter" to describe system expansion transmitters. In this regard, we agree with Bell Atlantic and USTA that the definition should indicate that fill-in transmitters are not added to a system for the purpose of expanding a system. Therefore, we have added language to make this clear.

Furthermore, we agree with the suggestion made by Joint Commenters that cellular expansion should be named "build-out" rather than "fill-in." Therefore, for purposes of the Cellular Radiotelephone Service, we define the term **"Five year build-out period"** to mean what we have previously called the "five year fill-in period". As a related matter, BellSouth recommends that the definition for this period indicate the exclusive nature of an initial cellular system licensee's expansion rights during its five year build-out period. We agree and are adding language to this effect.

Initial cellular applications. Over the past decade, our rules for the Cellular Radiotelephone Service have focused on procedures and requirements governing applications for authority to operate new cellular systems. These applications for new systems are or have been subject to various rules and policies that do not or should not necessarily apply to subsequent applications for those systems (such as for modifications). As there is frequently a need in Part 22 to refer specifically to applications for new cellular systems, including applications to expand existing systems into unserved area during Phase I and Phase II, in CC Docket 90-6 we adopted the term "initial applications" to refer to these applications. The NPRM proposed that this term be defined as "applications for authority to operate the first cellular system on a channel block in a cellular market." However, this wording would appear to exclude applications for authority to operate new cellular systems in unserved area, which we did not intend. Accordingly, we revise the wording to refer to the establishment of a new station or system, regardless of whether it is first in a market. BellSouth recommends that we add the word "cellular" because the definition has been specific to the cellular service. We agree. In light of our recent decisions to employ competitive bidding procedures to select from among mutually exclusive initial applications, we are defining what we consider to be initial and modification applications for the purpose of eligibility for competitive bidding procedures, not only for the cellular service but also for the other Public Mobile Services as well. However, the definitions will be different depending upon the way the service is licensed. BellSouth also suggests that we add a term to describe applications related to existing cellular systems (e.g., modifications, transfers, etc.). We did not add such a term because, in Part 22, we generally refer to these other applications either specifically (e.g., "applications for modification," "applications for assignment of authorization") or generally by using the qualifying phrase "other than initial applications."

Partitioned cellular market. The NPRM proposed a definition for the term "Partitioned RSA," which has been used informally to describe the contractual splitting of Rural Service Areas (RSAs). BellSouth believes that the definition should not be restricted to RSAs, but rather broadened to include any type of cellular market. It recommends that the definition include a sentence reading: "Partitioned markets are considered separate cellular markets as defined in § 22.909."

Some partitioned RSAs resulted from settlement agreements during initial licensing. Others have been created subsequent to grant of an initial license. Unlike licensees in some of the MSAs, RSA licensees have not had an obligation to cover 75% of the area or population of their markets. In certain cases, RSA licensees have concluded that it may not be viable, for various reasons, to expand their systems to cover portions of their RSA within their five-year build-out period. Rather than allowing these portions

to go unserved, however, they have applied for authority to operate facilities there and upon receiving the authorizations have then assigned them to another party (a partial assignment). Although an RSA licensee cedes away a portion of its market by doing this, it still benefits by its compensation from the partial assignment. We have allowed this practice because it results in the public receiving service in the transferred area faster than it otherwise would and because the compensation that the RSA licensee receives may be applied toward building cellular facilities in the portion of the market it retains. However, rather than forcing RSA licensees to follow the two-step procedure just outlined (step one - receive authorization, step two - assign it), which wastes our staff resources, we allow the assignee to apply directly to us for a new cellular system in the ceded portion of the market upon evidence that the partitioning contract exists (see old § 22.31(f)(2)). This achieves the same result with only one step.

Although the old rule applied only to RSAs, and most MSA licensees have been obligated to serve most of the area or population of their markets themselves, we have nevertheless allowed at least one MSA licensee to partition its market. Furthermore, we have decided here to remove the 75% market coverage requirement (see discussion of new § 22.911, infra). Therefore, we agree with BellSouth that the definition concerning partitioning should be broadened to include any type of cellular market. However, BellSouth's suggested language indicating that the partitions are considered separate markets is incorrect. The resulting systems are separate systems, with different authorizations and call signs, but the market itself remains the same. All systems on a channel block in a market have the same five year build-out period.

Radio Telecommunications Services. We are adding the word "paging" because this encompasses simple one way signaling, which might not be considered radiotelegraph service if no message is transmitted.

Station. GTE, Claircom Communications Group, L.P. (Claircom), Paging Network, Inc. (PageNet) and others propose that we should define the term "station" because it is used throughout Part 22 but is never defined. We agree. Therefore, we included the definition of station contained in the Act.

Subpart B - Application Requirements and Procedures

§ 22.101 Station files.

We proposed to codify our long-standing policy that station files at the Commission constitute the official record for the station. We indicated that the purpose of the proposed rule is to inform applicants and licensees that the Commission's unofficial records or data bases are not official records and that reliance on these secondary sources neither confers rights nor deprives parties of their rights. See, e.g., Mobilfone of Northeastern Pennsylvania, Inc., 5 FCC Rcd 7414 (Com. Car. Bur. 1990).

Some parties oppose the proposal to make the station files the only official record of Part 22 stations. For example, the Federal Communications Bar Association (FCBA) argues that we should recognize our computer data bases of Part 22 licensing information as a co-equal official record with the existing station files and public notices. Radiophone, contends that Section 552(a)(2)(C) of the Administrative Procedure Act (5 U.S.C. § 552(a)(c)(2)) requires the Commission to provide an official data base in which station information is properly indexed before the Commission may use such information to the detriment of a licensee or applicant. Furthermore, Radiophone argues that the proposed rule is inconsistent with the text of the Part 22 NPRM, which it believes suggests that applicants should use the Mobile Services Division computer data base when preparing their technical exhibits.

While Bell Atlantic does not object to our proposal to make our station files the official record, it points out that those files are often incomplete, inaccurate, and out of date. In any event, Bell Atlantic asserts that the proposal should be revised to allow licensees to show that the station file is not accurate by providing evidence of the inaccuracy. In any event, Telocator recommends that there be no monetary forfeiture levied in the event applications, in which the applicant certifies as to the accuracy of the engineering exhibits, in fact contain errors resulting from the applicant's reliance on the computer data base. Finally, Telocator and Bell Atlantic believe that the proposed rule should be modified to allow parties to supplement official station files by submitting date stamped copies of any filing.

We continue to believe that our station files should serve as the official record for each station. We are not persuaded to recognize our computer data bases of Part 22 licensing information as official records for the following reasons. First, material in the station files exists exactly as submitted by the

applicants, whereas data in the licensing computer data bases has been manually keyed in and is thus subject to keystroke and typographical errors. Although our ongoing efforts are making considerable progress in cleaning up our data bases, they still contain some incomplete, erroneous, or duplicative information. Second, the licensing data bases do not contain textual or graphical material, such as letters and pleadings, or diagrams and maps. Furthermore, we disagree with Telocator that applicants should be immune from sanctions for submitting incorrect data in an application, resulting from reliance on the Commission's data bases, private data bases, or other unofficial sources. We agree with the commenters, however, that licensees should be free to supplement or seek correction of official station files outside of the application and notification process.

We reject Radiophone's argument that the Commission's station files do not comply with the APA. The station files serve as the Commission's official files in accordance with Section 552(a)(2) of the APA (See 5 U.S.C. §552(a)(2). See also e.g., Calument Radio, 5 FCC Rcd 1196, 1197 (1990); Rotkin d/b/a Northeast Communications, Mimeo No. 2711 (Com. Car. Bur., released Sept. 23 1985); Crico Telecommunications of San Jose, 3 FCC Rcd 4846 (Mobile Serv. Div. 1988)). With respect to Radiophone's argument that this proposal is inconsistent with the language in the NPRM, our intent is to make our computer data bases as accurate as possible to assist applicants in preparing technical exhibits. While we allow licensees and applicants to utilize our computer data bases, all users of these data bases are cautioned that these sources are "unofficial and should not be relied on." See § 0.434.(e) of the Rules (47 C.F.R. §0.434(e)).

The NPRM provided that "applications, notifications, correspondence and other material, and copies of authorizations, comprising technical, legal, and administrative data relating to each station in the Public Mobile Services are maintained in individual station files." Joint Commenters suggest that the definition be modified by adding: "... maintained by the Commission ...." Otherwise, the rule could be misconstrued to refer to the station files maintained by the carriers. We agree and are adding the suggested phrase.

§ 22.105 Written applications, standard forms, microfiche, magnetic disks.

We proposed to revise our microfiche rule to require that all applications on standard forms (including all exhibits and attachments), regardless of their length, and any filings pertaining to a current or pending application or an existing authorization must be filed in microfiche form. We also proposed that, except in the case of emergency filings, we would require filings longer than three pages to be filed in microfiche form. We proposed these revisions to our microfiche rule for several reasons. First, we noted that we proposed to redesign our application and notification forms, significantly shortening them. We indicated that although these form changes would make some filings shorter than they currently are, we would continue to require that all applicants file their applications in microfiche form because of constraints in our file storage space and microfiching resources. In addition, we proposed to modify our microfiche rule to require that all microfiche appear on a black background. Finally, we proposed to permit applicants to file applications on magnetic disks. We emphasized that any rules that we adopted with respect to filings on magnetic disks would not become effective until we obtain the necessary equipment to implement this process.

Most of the commenters oppose our proposal to require that all filings, regardless of length, be submitted on microfiche. They argue that such a requirement would expand the already burdensome microfiching requirements, which are borne solely by Part 22 licensees. They also argue that the proposal would be inconsistent with the terms of the Office of Management and Budget's (OMB) original approval of our microfiching requirement. The Office of Advocacy of the Small Business Administration (OASBA) argues that our proposal does not comply with the Paperwork Reduction Act, 44 U.S.C. §§ 3501-20, which was intended to reduce the paperwork burden on small business by requiring agencies to consider the least burdensome alternative. Bell Atlantic disagrees that the proposed revision of our microfiching rule is necessary because of the Commission's file storage space constraints. It argues that while the use of microfiche may be cost-effective in terms of record storage for long documents, it is not cost effective for four to five page documents. In any event, it maintains that the cost of microfiching documents greatly outweighs the minimal storage requirements for short documents. OASBA believes that the cost of starting a micrography operation is approximately $50,000, a cost that it believes would be unduly burdensome on small business.

In addition, several of the commenters argue that the Commission should not in effect eliminate the provisions of current § 1.45, which allows parties filing opposition or reply pleadings in contested proceedings to file the microfiche copies within 15 days of the paper copies. They argue that elimination of this current grace period would adversely impact small carriers that lack in-house microfiching capabilities. In addition, Cellular Telecommunications Industry

Association (CTIA) opposes the proposed elimination of the option to file microfiche copies of an application within a few days of the filing of the original application. It contends that this proposal would harm small business and does not take into account the high investment costs of microfiching equipment and possible equipment failures.

The majority of the parties support the proposal to allow applicants to submit the technical and administrative data contained in applications and notifications on magnetic disks, and they submit comment regarding the procedures for implementing the proposed format. A few commenters, however, oppose the proposal. For example, Bell Atlantic argues that use of magnetic disks would (1) make it more difficult for the public to obtain information concerning applications; (2) make it more difficult for the Commission to process information, absent strict disk format standards; and (3) not be cost effective for Part 22 filings that are under 10 pages in length. Finally, several parties propose alternatives other than electronic filing. OASBA, for example, advises the Commission to consider optically scanning all relevant application information and then placing the data on a computer or compact disk. US West/New Vector (New Vector) recommends that the Commission should be connected to a national packet data network so that carriers can examine the filings relating to neighboring systems' cell site locations and channel set information prior to designing their own systems.

After careful consideration of these comments, we continue to favor adoption of the rule as proposed. While we recognize that a requirement that all filings be submitted in microfiche form is in fact somewhat burdensome and is unpopular, such a requirement is necessary because the Commission lacks adequate file space to maintain full-size paper station files. Given that microfiching services appear to be available in every State at reasonable cost, we believe that this rule presents the best interim solution until we are able to fully implement magnetic disk and electronic filing methods advocated by many of the commenters.

We disagree with OASBA that we have failed to consider the least burdensome alternative. We are aware that applicants are already submitting almost all filings in microfiche form and we do not believe that the requirement that they submit all filings in microfiche form would impose a significant additional burden on carriers. Moreover, we are currently seeking OMB approval of this change and will fully comply with all applicable OMB requirements.

As an alternative to microfiche, we proposed to allow filings to be submitted as graphics images on magnetic disks. We believe that the option to submit Part 22 filings as images on magnetic disks could be a convenient, cost effective alternative to microfiche. The other alternatives suggested by the commenters, such as optical scanning and connection to a national data network, may also provide additional alternatives to microfiche in the near future. The Commission is currently considering the acquisition and use of many of these technologies.

Concerning proposed § 22.105(e), we agree that the provision of old § 1.45 that allows the filing of microfiche copies of oppositions and reply pleadings in contested proceedings up to 15 days after the paper copies should not be contradicted in Part 22. Accordingly, we amended the introductory text to reference the exception provided by § 1.45. We disagree with CTIA, however, that applicants should be allowed to file their microfiche copies of their applications after the original paper application. Although we have informally allowed this practice, we believe that a requirement that the microfiche and the original paper copy be filed at the same time will conserve Commission resources by eliminating the staff time now spent associating the two filings. In any event, we note that proposed rule § 22.142 provides that both the paper original and the microfiche copy of filings notifying the Commission of commencement of service may be filed 15 days after service begins. Currently, they must be filed on the day service begins. Because these types of notifications constitute many of the notifications we receive, we believe that this 15- day grace period in filings will minimize the burden on applicants of having to file the original paper and the microfiche at the same time. Thus, we disagree with CTIA that our proposal will harm small business.

The NPRM proposed that all microfiche appear on a black background. In addition, the NPRM proposed that applicants be allowed to submit technical and administrative data on 3 1/2" magnetic diskettes formatted in MS-DOS 2.0 or higher. We asked for comments on the proposed format, the type of file to be used, and the data field delimiter.

NYNEX Mobile Communications Company (NYNEX) does not believe that all microfiche needs to appear on black backgrounds. It notes that currently microfiche appear on black, purple, and blue backgrounds. It maintains that in order to comply with the proposed rule, it would have to replace its equipment or ask for a waiver. NYNEX suggests that the Commission's standard should be based on legibility rather than the color of the microfiche background.

We proposed to require that microfiche appear on a black background because our experience is that

a black background produces the most legible microfiche. We agree with NYNEX, however, that the standard should be that of legibility, not color. Therefore, we revise the rule to require that microfiche must appear on a black "or other legible" background. We emphasize that unreadable microfiche may render a filing unacceptable or defective pursuant to new § 22.120(c) or new § 22.124(b), as applicable.

The commenters generally support our proposal to allow voluntary magnetic disk data filings, and the Mobile Services Division has recently obtained the equipment necessary to implement it. In the near future, we will establish a format for such filings and obtain software to move data directly from the disks to our data bases. At this time the cellular data base is complete and the paging data base is under development, but should be complete later this year.

We are adopting the magnetic disk rule, but placing a note after paragraph (g) delaying the effective date of that paragraph until we are ready to implement it. We are also removing the requirement in paragraph (g)(2) for use of a carriage return as a data field delimiter. We are planning to use ASCII characters as delimiters but we may need to change what characters are used at some point and we do not believe that a rule making proceeding is necessary or desirable for such a minor change. Likewise, we are not specifying a graphics file format for image files in the rule. We will specify a format (by Public Notice) under which both text and images will be be readable by the word processing software used throughout the Commission. Text could also be read by database software used by the staff and by programs written in programming languages used by the staff.

We also added the parenthetical expression "(FCC Form 600)" to the introductory text of the rule, as this is the main form required by Part 22. (As discussed later, we are replacing FCC Forms 401 and 574 with a single application form, FCC Form 600, to be used for all mobile services and certain fixed services.) We revised the entry for FCC Form 430 in Table B-1 to reflect the correct title of that form and to clarify that, for the Public Mobile Services, it is required only in conjunction with FCC Form 490. We revised paragraph (d)(2) to indicate that only two microfiche copies (one of which must be a master) must be filed for Phase I cellular applications. We revised paragraph (e) to include the 7- day filing requirement for the paper original of Phase I cellular applications selected in a random selection process (contained in old § 22.6(d)(3)), and the 15 -day allowance for filing the microfiche of opposition and reply pleadings (contained in § 1.45).

§ 22.107 General application requirements.

We added a sentence to indicate that applications must be signed as required by § 1.743 of the rules. Although this is not a substantive change, we believe that it deserves mention. We believe that a reference to the requirement to sign applications should be included in Part 22 because failure to comply with it could result in the dismissal of an application. We also note that we amended § 1.743 to allow "electronic signatures."

§ 22.108 Parties to applications.

The proposed rule provides that each application for an authorization in the Public Mobile Services must disclose the real party or parties in interest to the application. Such disclosures must include (a) a list of the applicant's subsidiaries, if any; (b) a list of the applicant's affiliates, if any; and (c) a list of the names, addresses, citizenship, and principal business of any person holding 5% or more of each class of stock, warrants, options, or debt securities of the applicant. The intent of the NPRM was to propose the retention of the substance of § 22.13(a)(1) as it existed prior to the NPRM with respect to the disclosure of real parties in interest. The proposed rules inadvertently omitted the substance of old § 22.13(a)(1)(iv), however, which requires that initial cellular applicants submit specific information concerning each partner in a partnership. Our intent then was to move this cellular-specific rule to new Subpart H, specifically to new § 22.953, which contains the requirements for the exhibits to be included in initial cellular applications. We have decided instead to restore the missing language to this section with a reference to § 22.953.

NewVector and BellSouth recommend that the proposed rule be revised to reflect a comprehensive description of the parties who must be identified in an application based on existing case law and practices, while eliminating unnecessary information. Bell Atlantic believes that the proposal to require all applicants to include detailed ownership and other information is redundant, if Part 22 applicants are required to file FCC Form 430 with their first application. Thus, it concludes that the proposed information collection is an unnecessary paperwork burden on applicants and the Commission. USTA also suggests that the proposed rule should make clear that the information required by this section may be met by referencing a licensee's current FCC Form 430.

We have adopted the substantive provisions of old § 22.13(a)(1) concerning the disclosure of information concerning real parties in interest. Given that the NPRM did not specifically ask for suggestions

concerning any other possible substantive provisions for new § 22.108, we will not expand upon the language proposed in this rule making. We disagree that the information required by new § 22.108 is not needed because it is the same information collected in FCC Form 430. In the Public Mobile Services, we do not require that FCC Form 430 be submitted by every applicant, but only by those seeking an assignment of authorization or transfer of control.

§ 22.115 Contents of applications.

This rule is a rewrite of old § 22.15. In the new rule, a note following paragraph (a)(4) states that until further notice, the Commission will continue to require that geographical coordinates submitted be based on the 1927 North American Datum (NAD27). The note also advises that the Federal Aviation Administration (FAA) currently requires geographic coordinates based on the 1983 North American Datum (NAD83). Thus, applicants are alerted to the fact that they may need to convert geographical coordinates from one datum to the other in order to satisfy the requirements of both agencies.

McCaw, GTE, PagingNet, Metrocall, and Joint Commenters all argue that the requirement to use the new datum for FAA filings and the old one for Commission filings leads to confusion on the part of applicants and between the two agencies. McCaw and GTE recommend that during the interim before the Commission converts to NAD83, applicants be required to submit two sets of coordinates, one based on NAD83 and the other on NAD27.

We agree with McCaw and GTE that, during the transition to NAD83, we should allow applicants and notifiers to voluntarily submit NAD83 coordinates in addition to the required NAD27 coordinates. Sometimes having both sets of coordinates readily available facilitates resolving air navigation hazard questions and avoids our having to request additional information from applicants. Accordingly, in Schedules B and C of FCC Form 600 we are providing space for applicants and notifiers to supply NAD83 coordinates should they wish to do so.

§ 22.120 Application processing; initial procedures.

This rule is a clarification and update of old § 22.27. It specifies the initial procedures that our Mobile Services Division (MSD) follows when processing applications for authority to operate a Public Mobile Services station. Joint Commenters point out that the proposed rule makes it clear that the assignment of a file number does not preclude the return or dismissal of an application. Therefore, they recommend that we delete all references to acceptance for filing of an application as being "tentative." In addition, Joint Commenters aver that the proposed language, which states that the Commission "periodically" issues Public Notices listing applications that are accepted for filing, indicates that the Commission plans to alter its current practice of releasing weekly Public Notices. It opposes any effort to alter this practice, believing that licensees could miss relevant information and this might lead to additional controversies.

We are persuaded that applicants are generally aware of the fact that, even though we list applications on our public notices as "accepted for filing," we may subsequently find that these applications are, in fact, not acceptable for filing. Accordingly, we agree to delete the references to the acceptance of applications for filing as being "tentative." Our use of the word "periodically" in new § 22.120(d) does not signal an intent to alter our current practice of providing weekly Public Notices of filings and actions in the Paging and Radiotelephone Service. The old rule specifies that we will issue public notices "at regular intervals" but does not specify that they will be issued weekly. The word "periodic" means "occurring or re-occurring at regular intervals." Therefore, our use of the word "periodically" does not change the substance of this rule. We note however, that under either the old or new rule, we do have the flexibility to issue public notices either more or less frequently (e.g., if necessary to accommodate changes in the volume of applications filed).

Lastly, we are adding language in paragraph (a) indicating that for administrative efficiency, the Commission, in its discretion, occasionally (1) consolidates separate applications filed simultaneously by the same applicant into a single application (with one file number) and (2) splits applications comprising two or more severable proposals into separate applications (with different file numbers). This reflects current practice.

§ 22.121 Repetitious, inconsistent or conflicting applications.

We proposed to revise old § 22.21 and add a new paragraph which provides that where an authorization is automatically terminated for failure to commence service, the Commission will not consider an application by the same party for authorization to operate a station on the same channel in the same geographic area until one year after the date the authorization is terminated. We explained that this proposal would discourage warehousing and encourage applicants to construct facilities for which they have received an authorization.

The commenters oppose the proposal prohibiting reapplication for the same channel in the same geographic area. For example, Centel Cellular Company (Centel), Telocator, Southwestern Bell Corp. (Southwestern Bell) and others argue that the proposal does not take into account situations where authorizations expire due to circumstances beyond the applicant's control, such as delays in receiving zoning approval and difficulties in negotiating a lease agreement, or legitimate budgetary constraints. Centel contends that the proposal unfairly works against licensees who seek to abandon one site in favor of a neighboring location that could provide better coverage. Telocator argues that this proposal exposes existing licensees to competing applications and works against wide-area systems. It suggests that we allow applicants to reapply if the facilities are within a specified distance of an operating co-channel station. McCaw and Joint Commenters suggest that a one year moratorium on refiling should not apply in cases where an authorization is voluntarily returned. SNET Paging, Inc. (SNET) believes that the proposed rule should not require a waiting period before an existing paging operator may reapply for a transmitter whose interfering contour is within the composite interfering contour of the existing transmitter.

Despite the opposition of the commenters, we are adopting this proposal with one modification. This new rule is intended to address an abusive practice whereby some licensees repeatedly obtain and hold authorizations for a channel or channels in an area, but never construct the stations. By continuing to apply for and obtain authorizations on a channel in a given area, and then allowing those authorizations to automatically terminate for failure to construct, a licensee can, at minimal cost, control that channel and prevent a competitor from obtaining an authorization for it, without using it to provide service to the public. The rule as revised will allow the Commission to dismiss such applications. The rule does not apply to situations where the licensee submits an authorization for cancellation. It applies only to situations where the authorization automatically terminates. When a license is cancelled, public notice is given of that action, allowing others to become aware that they may have an opportunity to apply for the relinquished channel. In situations where construction is delayed by circumstances truly beyond the licensee's control, the rules provide that the licensee may apply for an extension of time to construct. The one modification we are making to the proposed language is to exempt authorizations in the Cellular Radiotelephone Service. Because cellular authorizations convey authority to operate on all cellular channels in a channel block in a market, and cellular licensees can not obtain authority for both channel blocks in a market, the type of abuse this rule is intended to curb does not occur in the Cellular Radiotelephone Service.

§ 22.122 Amendment of applications.

This section replaces old § 22.23(a), (b), (d) and (f). We added a new paragraph (d) that addresses the prohibition on amendment of Phase I cellular unserved area applications prior to the selection process. Otherwise, we adopt this section as proposed.

§ 22.123 Classification of filings as major or minor.

We proposed to combine in this section the rules in Part 22 for classification of applications and amendments. Section 309 of the Act (47 U.S.C. §309) provides that, with certain exceptions, all applications and substantial amendments thereto are subject to a 30 day public notice period before grant, but that "minor" amendments to these applications are not. Old § 22.23(c) set forth criteria for the classification (as "major" or minor) of amendments to applications. Old § 22.27(c)(1) referenced these criteria in the context of defining which types of applications are considered "applications for a minor change in the facilities of an authorized station" under the Act (47 U.S.C. §309(c)(2)(A)). We proposed amendments intended to (1) eliminate the need for this cross reference by combining the separate classification rules; (2) clarify the criteria for classifying amendments; and (3) set forth criteria for classifying applications, instead of classifying them by reference to the criteria for amendments. For the most part, the proposed rule maintains the classifications that we have historically used. In view, however, of increasing congestion and interference in the Public Mobile Services channels used for fixed (e.g., control or repeater) operations, and the elevation of fixed stations from secondary to primary status, we proposed that applications (or amendments) for technical modifications to fixed stations no longer automatically be considered minor. We requested comment as to whether there are circumstances under which an application (or amendment) requesting a change in the location or technical parameters of an existing fixed transmitter could properly be classified as minor.

McCaw and ALLTEL Mobile Communications, Inc. (ALLTEL) state that the proposed rule is inconsistent with rules we later adopted in the unserved cellular area proceeding (CC Docket No. 90-6), in regard to certain contract extensions. McCaw finds the proposed rule confusing in that it refers to "new" CGSAs; McCaw believes this could be misinterpreted to mean a modified or enlarged CGSA proposed by the existing licensee.

Bell Atlantic and New Par recommend that the rule be revised to clarify that a filing is major only if it seeks authority for the "initial" CSGA in the market, and that service area boundary (SAB) extensions be excluded where the adjacent market licensee consents.

Telocator makes several recommendations. It recommends that the rule be amended as necessary so that applications and amendments requesting only the following modifications to fixed stations would be classified as minor: (1) modifications to 72-76 MHz control stations, provided that there is no increase in the height, no increase in power, and no change in location; (2) modifications to 150 MHz and 454 MHz control stations, provided that the service area contour and interfering contour are not enlarged; (3) modification to 928 MHz, 932 MHz, and 959 MHz control stations, provided that there is no change in location and no decrease in co-channel separation; and (4) modifications to convert base stations to control stations, provided that the facilities are operated under the same technical parameters authorized to the station as a base.

Joint Commenters recommend that any amendment to a pending application that cures an otherwise fatal application defect be classified as a major filing in accordance with Continental Cellular, 6 FCC Rcd 6384, 6385 (1991). Joint Commenters further recommend that the rule provide that an application to change a requested channel in the 931-932 MHz paging band is not a major filing. Joint Commenters also recommend that the rule be modified to reflect provisions of old § 22.23(c)(2), which classifies filings involving service contour expansions greater than 1 mile (1.6 kilometers) along a cardinal radial as major (and conversely, those involving expansions less than 1 mile (1.6 kilometers) as minor.

Initially, we note that much of the rest of the commentary on this proposed rule is addressed to the uses of and requirements for our two primary forms (FCC Forms 401 and 489). The uses of and requirements to file these forms (noting that FCC Form 401 is being replaced by FCC Form 600) are actually located in other rule sections. The main purpose of new rule § 22.123 is to explain the basis upon which we classify the applications and amendments to applications that we receive (all of which should be on FCC Form 600), pursuant to Section 309 of the Act. Subsection (g) of Section 309 specifically authorizes the Commission to adopt reasonable classifications of applications and amendments in order to effectuate the purposes of that section (which principally concern public notice and opportunity for parties to file petitions to deny). Although licensees may file an application requesting authority to make any type of change to their facilities, certain existing and proposed rules allow them to make various types of changes to their facilities without filing an application and obtaining prior approval, provided that an application requesting the change would be classified under § 22.123 as minor. See, for example, old § 22.9(d) and new § 22.163. Thus, an important additional role for new § 22.123 will be to provide guidance as to what types of technical changes to facilities can be made without prior Commission approval. New § 22.123 does not in itself require applications or amendments to be filed, nor does it address the use of the specific forms, i.e., FCC Form 600 or Form 489. The requirement to file applications (FCC Form 600) stems from new § 22.3 (must have authorization to operate station) and is contained in new § 22.105 (authorization granted only upon written application).

After consideration of the comments, we are adopting the proposed rule with a number of changes. First, in regard to the comments that the proposed rule is complex and confusing, we have restructured it to have fewer paragraph levels. We believe this clarifies the rule and makes it easier to follow. We established a separate paragraph for the Rural Radiotelephone Service because several of the criteria applicable to the Paging and Radiotelephone service do not also apply to Rural Radiotelephone filings. We reworded the paragraph concerning "new CGSAs" to clarify that applications are classified as major if they request authority to operate a new cellular system. This paragraph covers only applications for a new system that, if granted, result in assignment of a new station call sign and creation of a new station file. It should not be interpreted to apply to applications requesting expansion of an existing CGSA (particularly during the five year build-out period). We can, however, understand why the commenters made this interpretation, as we did not include a paragraph covering expansion of CGSAs after the five year build-out period. To correct this, we added a new paragraph (g)(2) providing that applications requesting expansion of an existing CGSA, except during any applicable five year build-out period, are classified as major. Thus, all Phase I and Phase II unserved area applications that propose expansion of an existing CGSA are classified as major.

In regard to McCaw, ALLTEL, Bell Atlantic and New Par's comments concerning contract SAB extensions in the Cellular Radiotelephone Service during the five year build-out period, they are correct and we modify the rule to conform to the changes we made in old § 22.9(d)(7) in the Second Report and Order in CC Docket No. 90-6, 7 FCC Rcd 2449 (1992).

Under proposed and new § 22.123(b), applications for regular authorization of facilities

operating under a developmental authorization are classified as major. We believe this classification is appropriate because most developmental authorizations are issued to provide a trial period for a particular transmitter or service, in view of a particular interference potential. Applications for regular authority should be subject to petitions to deny from parties that may have received interference during the trial period. Also, we note that applications for developmental authorizations pursuant to new § 22.409 (experimentation toward the establishment of a new public mobile service) are classified as major. Applications for developmental authorizations pursuant to new §§ 22.411, 22.413, 22.415, or 22.417 could be classified either as major or minor, depending upon how they meet the other criteria in this section.

As proposed, we remove the provision contained in old § 22.23(c)(2) whereby filings proposing an expansion of a service area were classified as major only if the expansion would be larger than 1 mile (1.6 kilometers) along one or more of the cardinal radials. This provision originated in 1976, when engineering exhibits with applications were typically evaluated subjectively on a case-by-case basis. It was part of a set of provisions intended to add objectivity to the process while still allowing the Commission some flexibility in classifying amendments as major or minor (see Amendment of Parts 1 and 21 of the Commission's Rules and Regulations Applicable to the Domestic Public Radio Services (other than Maritime Mobile), Report and Order, Docket No. 19905, 60 FCC 2d 549,555 (1976)). The service area formulas we are adopting in new §§ 22.537 and 22.567 will eliminate the ambiguities that resulted from visually reading the Carey Report curves, obviating the 1-mile allowance for error. Although applications for service area expansions of 1 mile or less would have been classified as minor under old § 22.23(c)(2), old § 22.9(b)(6) prevented licensees from expanding their service area except upon grant of an application. Likewise, old § 22.117(b)(1) prevented licensees from adding a transmitter that would result in any expansion of a station's service area, except by grant of an application for authority to operate from the new site. Consequently, the only effect of this provision was to deny parties that might be adversely affected by an expansion of less than 1 mile notice and the opportunity to file a petition to deny the application. Our new interference criteria (see new §§ 22.537(a) and 22.567(a)(1)) are based on contour overlap, and any overlap, including overlaps of 1 mile or less will be considered as potentially causing interference. If we were to retain the 1-mile provision, a licensee could encroach upon a neighboring system in steps, by filing a series of "minor" applications, each proposing an additional expansion of less than 1 mile. We do not wish to encourage this type of creeping expansion by continuing to accord an advantage to applications for small expansions over applications for substantial expansions.

In regard to Telocator's suggestions, the rule as proposed provides that, in each of the situations they described, applications would be classified as minor. We hope that our restructuring of the rule has clarified this. Applications for authority to establish new fixed stations have always been classified as major, and we are not changing this. We are, however, adopting our proposal to classify applications for authority to modify existing fixed stations (and amendments that modify such applications) as major, when the modifications involve: (1) a change in the authorized channel; (2) an increase in the effective radiated power or antenna height above average terrain in any azimuth; (3) a change in location; or (4) for stations that are subject to § 22.150 (currently only 2 GHz stations and Hawaiian inter-island fixed stations), any substantial change in the technical proposal from that which was coordinated with other users. These criteria will apply regardless of the frequency range (e.g., 72-76, 150, 450, 929 MHz, etc.). We would have liked to incorporate more flexibility for fixed stations into the rule - to allow filings proposing small changes in the location, antenna height, or transmitting power to be classified as minor. However, our existing traditional mobile radio propagation and interference tools (such as service and interfering contours) are technically inapplicable for predicting interference or other adverse effects between fixed systems. The record does not provide any consensus as to technical criteria that we could use to determine when a filing involving a fixed station modification of the types mentioned is small enough to to be considered minor within the meaning of Section 309 of the Act. We may revisit this issue in the future.

§ 22.124 Notification processing.

This rule outlines the MSD's procedures for processing notifications. In the NPRM, we noted that the number of notifications which the MSD receives has grown steadily and accounts for a significant portion of the processing workload. Although we expect that our adoption of new §§ 22.163 and 22.165 will sharply reduce the number of notifications filed, we still believe that our procedures for processing them should be codified.

§ 22.125 Applications for special temporary authorizations.

This section consolidates and clarifies Part 22 rules governing the filing and consideration of requests for special temporary authorizations (STAs). Several

of the parties believe that the Commission should further expedite the handling of STA requests. For example, PacTel believes that STA requests should automatically become effective on the day filed. BellSouth recommends that licensees be allowed to make temporary minor changes in an emergency without prior approval.

Other parties believe that the Commission should provide greater flexibility in terms of the period that STAs remain in effect. PageNet suggests that the rule be revised to provide for a term of temporary authority that expires upon grant or dismissal of the FCC Form 600 application where such an application is filed concurrently with the STA request.

We disagree with the foregoing suggestions. Most of the provisions in the proposed STA rule are based on the requirements of Section 309(f) of the Act, and as such must remain unchanged. in response to BellSouth, however, we note that our adoption of new § 22.163 will allow many temporary or permanent minor changes to be made without a requirement for prior approval (or subsequent notification), even when there is no emergency.

§ 22.127 Public notices.

This rule is a revision of old § 22.27. Telocator and Southwestern Bell are concerned that the use of the word "periodically" suggests a change in the current practice of issuing public notices weekly. Joint Commenters recommend that the rule be revised to require public notice of pro forma assignment and transfer applications that are not now listed. In addition, they suggest that the sentence providing that "[i]nformative listings ... do not create any right to file oppositions or other pleadings" should be deleted because it claims that some informative listings do create such rights.

As stated in our discussion of new § 22.120 supra, the use of the word "periodically" does not reflect an intent to change the practice of providing weekly public notices. Also, we will not revise the rule to require that applications for pro forma assignments and transfers appear on public notices. The Act does not require such notice and, in most cases, we do not believe that the public would benefit from it. In addition, we disagree that the language providing that informative listings do not create rights should be deleted. Such listings do not create rights unless the Commission specifies otherwise.

§ 22.128 Dismissal of applications.

This rule section consolidates the provisions of old §§ 22.20 and 22.28, pertaining to dismissal of applications. Joint Commenters note that paragraph (b) of the rule would enable the Commission to dismiss applications for failure to prosecute or to respond substantially within a specified time to official correspondence or requests for additional information. They argue that it is unclear what the word "substantially" is intended to mean in this context. Bell Atlantic points out that new § 22.128(a) provides that a request by an applicant for dismissal of an application after it has been on public notice is deemed a request for dismissal "without prejudice." It believes that the status of the dismissal as being with or without prejudice should be the same, regardless of whether the request for dismissal is filed before or after public notice.

Concerning Joint Commenters' request for clarification of the word "substantially" as applied to responses to official correspondence or requests for additional information, we expect to rely upon applicants to make a good faith effort to respond to our requests. The word "substantially" means that the response must address the substance of our requests. It would not satisfy the requirement, e.g., simply to acknowledge receipt of our correspondence or to respond but without providing requested materials or answers to questions posed by our requests. If an applicant refuses to provide sufficient information to enable us to make the determinations required for a grant of its application (see new § 22.132(a)), then the public interest would be disserved by retaining that ungrantable application on file in a pending status. Doing so could prevent others from applying for the proposed or other nearby facilities and serving the public. Therefore, we must dismiss such applications, and this paragraph provides the basis for us to do so. A further example of the need for this type of rule is the international coordination provision in new of new §22.128(c)(5) . In that paragraph, we proposed and are adopting herein a new provision enabling us to dismiss applications when it becomes apparent that, despite good faith efforts by applicants and administrations, the requested facilities cannot be authorized because of harmful interference anticipated by a foreign administration. When we receive an unfavorable response to an application coordination request from, for example, the Canadian Department of Communications, we generally ask the applicant to amend the technical parameters of the proposed facility to reduce predicted interference to the Canadian licensee's facility. Then we resubmit the request to the Canadian government. If a second unfavorable reply is received, we may request further amendments or in some cases ask for an on-the-air test, if provided for under the provisions of the applicable international agreement. In cases where these measures fail, however, we have not had, until now, a basis in our rules to dismiss the ungrantable

application. Instead, we have relied upon applicants to voluntarily request dismissal of the application. If they refuse, the application could remain on file in a pending status indefinitely.

As a minor matter, we reorganized the proposed rule so as to avoid characterizing as "defective" applications that are dismissed because the spectrum requested is not available, (e.g., a favorable international coordination response cannot be obtained), mutually exclusive applications that are dismissed because they are not the application that was granted after an auction, hearing or random-selection process, and untimely filed applications. In the first two situations, the applications should not be termed defective because they are ungrantable for reasons beyond the applicant's control. In the latter case, the application itself is not necessarily defective, but is simply prematurely or late filed. We also added new provisions under paragraph (e) providing that applications may be dismissed if there are no available channels to be assigned. These new provisions are procedural in nature and stem logically from old § 22.4(a)(2) and proposed § 22.7.

Finally, in regard to Bell Atlantic's comment about the status of a dismissal, an application cannot be dismissed if it has not been accepted for filing. If a request for dismissal is made before public notice of the acceptance for filing, the application is simply returned to the filer without any Commission action.

§ 22.129 Agreements to dismiss applications, amendments or petitions to deny.

We proposed to add a new rule governing agreements to amend or dismiss applications, which is similar to the rules that govern such agreements in the broadcast services. See Formulation of Policies and Rules Relating to Broadcast Renewal Applicants, 4 FCC Rcd 4780 (1989), recon. denied, 5 FCC Rcd 3902 (1990). The proposed rule would require parties that file a mutually exclusive application for authorization to operate a Public Mobile Services facility and subsequently enter into a written agreement to withdraw that application to obtain the approval of the Commission. The rule would also limit the consideration that an applicant can receive for agreeing to withdraw an application to its legitimate and prudent expenses. We further proposed that when a petition to deny is withdrawn in exchange for money, the payment to the petitioner be limited to the legitimate and prudent expenses of prosecuting the petition. Similarly, proposed § 22.129 provided for the reimbursement of a potential petitioner's or objector's legitimate and prudent expenses incurred in preparing to file a pleading, even if the pleading was never filed.

Applicants Against Lottery Abuses (AALA) oppose this proposed rule. AALA believes that adoption of this provision would seriously debilitate or eliminate the efforts of "private attorneys general" to assist the Commission in policing abuse of its cellular rules, assuring that many such abuses go undetected in the future. The opportunity for private parties to assist the Commission, it argues, is expressed in the Communications Act and in other federal laws. Rather than a blanket limitation on settlement payments, AALA recommends that the Commission require that all cellular settlements involving withdrawal of a petition to deny be submitted to the Commission for approval. AALA also suggests that the Commission should deny payments to petitioners who file frivolous petitions.

Joint Commenters recommend that the Commission adopt a general rule prohibiting dismissing applicants and petitioners from receiving payments in excess of reasonable and prudent out-of-pocket expenses without prior Commission approval. They suggest that the Commission should be required to approve reimbursement in excess of out-of-pocket expenses in the limited circumstances where the dismissing applicant or petitioner appears to have a sufficient prospect of success on the merits to warrant its continued prosecution of its position in the absence of a settlement payment in excess of its out-of-pocket expenses. Joint Commenters and Pacific and Nevada Bell believe that the Commission should avoid the potential for delay in approving settlements by amending the rule to provide that approval should be assumed to have been granted if action on the proposed settlement does not occur within 30 days of the date approval is sought. In addition, BellSouth suggests that the proposed rule should include the rules regarding settlements in comparative cellular renewal proceedings recently adopted in Amendment of Part 22 of the Commission's Rules Relating to License Renewals in the Domestic Public Cellular Radio Telecommunications Service, 7 FCC Rcd 719 (1992) (Report and Order), modified on recon., 8 FCC Rcd 2834 (1993) (Memorandum Opinion and Order on Reconsideration), Cellular Renewal Proceeding,.

The purpose of this rule is to discourage the filing of speculative applications and litigious pleadings designed solely to extract money from sincere applicants, while still providing some incentive for legitimate petitioners and applicants to withdraw from proceedings and thus expedite service to the public. In the Third Report and Order and Memorandum Opinion and Order on Reconsideration in CC Docket No. 90-6, 7 FCC Rcd 7183 (1992) (Third Report), we addressed and dismissed similar arguments by AALA opposing the settlement limitation rules with respect to cellular applications or authorizations. In that Order,

we indicated that AALA's proposal not to limit payments could encourage "greenmail" (i.e., pay-offs exceeding legitimate and prudent expenses) and also would be administratively burdensome. For the same reasons, we reject the proposals of AALA and the Joint Commenters. Moreover, we shall extend our limitations on payments made to petitioners and reimbursements made to would-be petitioners to include payments made for withdrawing or reimbursements for refraining from filing other types of pleadings such as informal objections, petitions for reconsideration and other adverse pleadings. See Third Report, 7 FCC Rcd at 7185-86. Thus, we consider informal objections and other adverse pleadings to be similar in scope to petitions to deny. Therefore, these pleadings should be subject to the same limitations on payments and reimbursements that apply to petitions to deny. Further, we shall not adopt the proposal that a settlement should be assumed to have been approved if the Commission has not acted upon it within 30 days of the date it is filed with the Commission. We cannot guarantee that the required review will always be complete within 30 days. .

Finally, with respect to BellSouth's comments regarding the rules adopted in the cellular renewal proceeding, we stated in the Third Report that two of the rules adopted in the Cellular Renewal Proceeding, namely old §§ 22.944 and 22.945, were being removed as duplicative because they were superseded by old §§ 22.927 and 22.929, which we adopted in the Third Report. Old §§ 22.927 and 22.929 limit payments to parties filing petitions or threatening to file petitions against cellular applications but who later withdraw their petitions or threats to their legitimate and prudent expenses.

§ 22.131 Mutually exclusive applications.

This rule sets forth the basic definition of mutually exclusive applications in the Public Mobile Services and states that when an applicant files an application knowing that it will be mutually exclusive with other applications, it should not include additional requests for channels or facilities which by themselves would not be mutually exclusive. Joint Commenters suggest that the rule be expanded to detail procedures for severing applications containing several proposals, in the event that at least one, but not all, of the proposals cause the application to be mutually exclusive. Joint Commenters note that the Mobile Services Division sometimes splits applications to effect such severences, but these procedures have never been reflected in the rules.

It is true that the MSD has split applications on occasion, when necessary for administrative efficiency. In addition to separating the proposals in an application that cause it to be mutually exclusive from those that do not, MSD has also split applications for other administrative reasons (e.g., to separate one-way paging channel requests from two-way mobile channel requests so that different call signs can be assigned and to separate requests for facilities that are widely separated geographically.) Furthermore, we anticipate that it may occasionally be necessary for us to split applications in order to apply our new criteria for classifying applications as initial or modification for the purpose of determining eligibility for competitive bidding procedures (see e.g. new § 22.541).

Thus, we agree with Joint Commenters that Part 22 should note that the Commission may in its discretion split applications comprising severable proposals into separate applications, but the appropriate place to state this is new § 22.120 rather than this rule. See discussion of new § 22.120, supra.

§ 22.135 Settlement conferences.

We proposed a rule that would direct parties or their attorneys to participate in settlement conferences regarding application proceedings. The proposed rule provides that if the Commission determines that a settlement conference should be convened, the parties or their attorneys are obligated to participate in person or by telephone conference call. Failure to participate in such a conference would be deemed a failure to prosecute, rendering that party's application or petition defective and subject to dismissal.

Most of the parties generally support the proposal. GTE and SMR Systems, Inc. (SSI), however, recommend that the proposal not be limited to "contested application proceedings." For example, GTE suggests that where there is problem involving a small number of participants, it could be handled by a settlement conference as a form of negotiated rule making. In addition, GTE recommends that we minimize the burden on the Commission's staff by encouraging participants to negotiate issue resolutions without all the formalities included in this proposed rule. Bell Atlantic suggests that conferences be called only where there are specific issues within the Commission's purview that would benefit from an oral conference. Joint Commenters recommend that the rule be expanded to include the use of Alternative Dispute Resolution procedures. New Vector suggests that the rule be revised to require that a Commission attorney participate in the conferences.

Based on the comments supporting this proposal, we believe that the adoption of this rule will expedite the resolution of many contested proceedings. Further, we agree with GTE and SSI that the rule

should not be limited to application proceedings. Therefore, we are amending the rule to apply to any contested proceeding. We also agree that this rule should encourage all parties to use alternative dispute resolution procedures and should reference these procedures. See Use of Alternate Dispute Resolution Procedures in Proceedings Before the Commission in Which the Commission Is Not a Party (Notice of Proposed Rule Making and Second Notice of Inquiry), 7 FCC Rcd 2874 (1992).

We disagree with New Vector that the rule should require that a Commission attorney participate in all proceedings. Although, in most cases, a Commission attorney will in fact participate in these settlement conferences, there may be instances where other Commission staff, such as accountants or engineers, will be able to conduct such conferences. Finally, we reworded paragraph (c) to avoid characterizing as "defective" an application or petition that is dismissed because of a party's failure to appear at a settlement conference.

§ 22.137 Assignment of authorization; transfer of control.

This rule tracks old § 22.39. Metrocall suggests that consent to assignment or transfer should become valid when granted and remain valid after 60 days from the date of public notice of the grant. It asserts that this approach will reduce the confusion and pressure associated with obtaining copies of the grant and make it more likely that parties will be able to close on a Final Order without having to seek an extension of the grant. Telocator proposes revising the rule to provide that the Commission consent remain valid for one year after grant. It believes that the one-year period, which is identical to that accorded construction permits, will reduce the confusion and pressure, particularly for large transactions, and make it more likely that parties will close on the transactions without having to seek an extension of time. Joint Commenters recommend that the word "corporate" be removed from the introductory text because the rule applies to licensees doing business in other than the corporate form. Telocator recommends that the word "revert" be stricken from new § 22.137(b) and replaced with "remain with" because the transfer or assignment does not occur if there is no closing.

Consistent with our decision to address assignments of authorization and transfers of control as separate types of legal transactions under Part 22 rather than considering a transfer of control to be a type of assignment of authorization, as was proposed (see discussion in § 22.99, supra), we added terms such as "consent to transfer of control," "transferee" and "transferor" in appropriate places throughout this section. We disagree that we should allow applicants additional time to complete the transaction. Our experience has shown that parties are usually able to complete the transaction within 60 days of Commission approval. When parties have been unable to complete the transaction within the 60 day period, they typically have sought an extension of time, which is routinely granted where good cause has been shown. We believe that the rule as proposed promotes our objective of expediting application processing and does not create additional burdens on the applicants. We are removing the word "corporate" from the introductory language, although we note that this word is contained in Section 310(d) of the Act (47 U.S.C. §310(d)). We also are replacing the phrase "revert to" with the phrase "remain with."

§ 22.139 Trafficking.

This proposed rule replaces old § 22.40, paragraphs (a) and (b). Joint Commenters suggest that the rule should state that, in the case of applications that are expected to be included in a random selection process, the facts that (1) a large number of applications are filed; (2) delays occur in the processing of the applications; and (3) the applicant receives a grant only in isolated territory, are all "foreseeable" and will not be deemed changed circumstances for the purposes of prematurely transferring an authorization.

The objective of this rule is to state generally the Commission's policy that carriers must not obtain or attempt to obtain authorizations in the Public Mobile Services for the principal purpose of speculation or profitable resale, but rather for the provision of common carrier service to the public. The rule provides that any application may be reviewed by the Commission to determine if the circumstances indicate trafficking in Public Mobile Services authorizations, and the Commission may require parties to submit information demonstrating that they are not speculating in authorizations. Therefore, we find that the language suggested by Joint Commenters is unnecessary.

§ 22.142 Commencement of service; notification requirement.

This rule replaces old §§ 22.9(b) and 22.43(a) and (b). The matter of what constitutes service to the public raised significant attention in the comments and is discussed in the Report and Order. The commenters also raised several minor issues concerning this rule which we address here.

McCaw and others argue that the proposed rule could be interpreted to require notification every time a new cellular transmitter is brought into service,

which would be inconsistent with the proposal to eliminate the notification requirement for most internal transmitters added to cellular systems. They recommend that for cellular licensees, the requirement to notify the Commission apply only when commencing initial service on the system. Radiophone notes that the word "mailed" appears to limit how notifications may be filed and suggests that it be changed to allow notifications to be delivered to the FCC by any means.

We are persuaded that the proposed rule could be misinterpreted as requiring cellular licensees to notify the Commission whenever a new transmitter is brought into service. Therefore, we revise the rule to clarify that point and also explain that notifications can be mailed or delivered by other means.

§ 22.143 Construction prior to grant of application.

This rule consolidates all rules and policies regarding the construction of facilities prior to grant of an authorization to operate them. Construction of facilities prior to the grant of an authorization has been termed both informally and in some case law as "pre-grant construction" or simply "preconstruction." The proposed rule provides generally that Paging and Radiotelephone Service applicants may begin construction 90 days after the date of the Public Notice listing the application as acceptable for filing; and that Cellular Radiotelephone Service tentative selectees may begin construction 60 days after the date of the Public Notice listing them as tentative selectees. However, there are circumstances (e.g., international coordination needed, petition to deny filed, environmental processing required) under which applicants may not begin construction until their application is granted.

McCaw, GTE, Bell Atlantic and others argue that the 90 day waiting period for the Paging and Radiotelephone Service is too long and would no longer be relevant if the proposal to process applications on a first come, first served basis is adopted (thus eliminating the 60 day period for the filing of competing applications). They assert that applicants should know within 30 to 45 days whether any petitions to deny or mutually exclusive applications have been filed. Therefore, they recommend that the rule be modified to permit pre-grant construction 35 days after the date an application is listed on public notice. Telocator also claims that the 90- day waiting period constitutes a disparate regulatory treatment of Part 22 licensees in contrast to Private Radio Service licensees, who may construct at any time. They suggest that the rule be modified to allow applicants to construct most facilities at their own risk after filing their applications. Finally, BellSouth recommends that paragraph (e), which provides that an applicant must not begin construction "if the Commission notifies the applicant orally or in writing," be modified to require that the Commission provide written confirmation after providing oral notice.

We adopt the proposed rule with modifications. First, we correct the introductory text to state that operation may not begin until the Commission grants the authorization. The proposed text, taken from old § 22.43(d)(6), had stated that operation could not begin until the Commission issues an authorization. Sometimes, however, an authorization may be issued a few days after the application is granted. The Act requires only that the authorization be granted, not necessarily issued. Also, we added a sentence to clarify that, if the provisions of this section are not met, applicants must not begin to construct Public Mobile Services facilities before an authorization to operate is granted. We note that the mention of the service commencement notification requirement (see new § 22.142(b)) was dropped because that section will now allow operation 15 days before the notification is mailed or otherwise delivered.

Second, we are not adopting the language of proposed paragraph (b), which stated that construction may begin upon filing of an application (no waiting period) in the Paging and Radiotelephone Service (only) if the service area of the station is expanded by less than 2 kilometers (1 mile). This provision was taken from old § 22.43(d)(4)(iii), which was intended to allow the immediate construction of facilities requested in an application that would be classified as minor under old § 22.23(c)(2) and also met the conditions listed in old § 22.43(d)(3) (proposed paragraph (g)). This provision is no longer valid because, under new § 22.123, any expansion of a service area is classified as major. Also, there is no reason to limit this provision to stations in the Paging and Radiotelephone Service. If, for some reason, an application is filed in any of the Public Mobile Services requesting authority to operate additional or modified facilities where such operation would have been allowed without prior Commission approval under new §§ 22.163 and 22.165, this section should not be construed to prevent that construction prior to the filing of such application. To preclude such an interpretation, we revised the introductory text to clearly state that applicants may construct and operate facilities pursuant to new §§ 22.163 and 22.165 at any time, regardless of whether an application is filed requesting authority for such operation.

We agree that the existing 90 day waiting period for Paging and Radiotelephone Service applicants to begin construction is too long. Therefore, we reduce the waiting period from 90 to 35 days. We

also change the waiting period for cellular applicants to 35 days. Thus, both cellular and paging applicants have the same waiting period. This period is necessary to allow us to determine whether a petition to deny an application was timely filed. If a petition to deny is filed, it brings into question whether the application can be granted. As proposed, we retain the conditions that disallow construction when we can not be reasonably certain that we will be able to grant the application (see proposed paragraph (g), which becomes new paragraph (d) after the changes outlined above). Because construction of Public Mobile Services facilities entails not only the financial risk to the applicant cited by Telocator, but also environmental and other consequences affecting the public, we believe that it would not be in the public interest to allow construction of Public Mobile Services facilities to begin until it is reasonably certain that the facilities can be authorized.

We add language to proposed paragraph (e) (which becomes new paragraph (b) after the changes outlined above) stating that oral notification to stop construction will be followed by written confirmation.

§ 22.144 Termination of authorizations.

This rule lists the five ways, other than revocation, that Public Mobile Service authorizations can be terminated. BellSouth, New Vector, PageNet and others support automatic termination of authorizations for failure to construct or operate without specific Commission action. They believe that such automatic termination reduces paperwork and frees up unused channels more rapidly. Telocator asks, however, whether a channel becomes available for reassignment immediately upon termination of an authorization or only upon issuance of a public notice listing the authorization as terminated. Joint Commenters recommend that the rule be modified to reflect the former course, so that applicants can apply for channels without waiting for FCC action. BellSouth suggests that the proposed rule should be modified to allow exceptions to the automatic termination provision on a case-by-case basis where good cause is shown and an extension of time to comply with our construction rules is timely filed. PageNet supports the proposed elimination of reinstatements.

Several other parties oppose the proposed rule. For example, Southwestern Bell argues that the automatic termination provision is inflexible and would burden carriers' attempts to provide service to the public. Furthermore, it is concerned that the rule could be interpreted as resulting in automatic termination of an entire authorization if service does not begin from all authorized transmitters within the construction period. It recommends that the proposed rule should provide that authorizations do not automatically terminate when the Commission has failed to act upon a request for extension of time to construct prior to the required date of commencement of service. Metrocall contends that the proposed automatic expiration provision, coupled with the proposed first come, first served rule and the one year refiling prohibition, works against licenses seeking to expand their systems. Finally, Radiophone and Bell Atlantic oppose the proposal to eliminate reinstatements. They claim that is unduly harsh and may disrupt service to the public. Joint Commenters recommend that the provision allowing licensees to apply for reinstatement during a 30- day period after the construction period ends be retained, because there can be unexpected legitimate circumstances preventing compliance. They argue that elimination of the reinstatement period is "draconian" in light of the proposed limitations on reapplication for expired facilities.

We continue to believe that when a licensee abandons or fails to construct and operate a Public Mobile Services facility, the authority to operate that facility (not other facilities under the same authorization that were in fact constructed and brought into operation) should automatically terminate without specific Commission action. We disagree with commenters who believe this rule burdens carriers expanding their systems. We also are eliminating reinstatements as proposed. Instead of seeking reinstatement after an authorization automatically terminates, carriers should request an extension of time to complete construction before the end of the construction period. As a related matter, we incorporate Southwestern Bell's suggestion to add language stating that authorizations do not automatically terminate while a timely filed request for extension of time to construct is pending.

§ 22.145 Renewal application procedures.

The proposed rule states that applications for renewal must be filed by the licensee prior to but no more than 30 days before the expiration date of the license. This would eliminate the period of time after the existing 30 day filing period during which it is too late to file for renewal, but the authorization has not yet expired. We also proposed to eliminate the provision of the old rule that allows licensees who failed to timely file renewal applications to file reinstatement applications after the authorization expires.

NYNEX, and Pacific and Nevada Bell support our proposal to eliminate the gap between the license expiration date and the latest permissible renewal application filing date. Pacific and Nevada Bell recommend that we permit bulk renewals with a

minimum amount of information (i.e., call sign and station location). Along the same lines, Joint Commenters suggest that the renewal form be revised to require that applicants list only the call signs for facilities being renewed. Metrocall and Telocator believe that we should allow applicants to file their renewal applications at any time during the last year of the license term. According to the parties, this change would help avoid the rush of filings at the end of the renewal period and also permit the Commission and the Public Mobile Services industry to allocate resources more easily to the renewal process. Finally, SSI believes that failure to file a renewal application should render an authorization terminable, but should not automatically terminate the authorization. It argues that this approach would balance the need for spectrum reclamation against the need to maintain uninterrupted service to the public.

We adopt the rule as proposed. Because old § 22.45 specifies the first day of various months as the date that authorizations expire, most current authorizations will expire together on particular days each year. In the days before computers, this was a sensible way to manage the renewal work load. Because we are adopting the proposed language for new § 22.144(a) allowing any day of the year to be an expiration date, license expirations will eventually be spread out more evenly throughout the year. Allowing licensees to file renewal applications at any time during the 12 months prior to expiration of the authorization might help, at least in the near term, to avoid a rush of filings on particular days. However, Section 307(d) of the Act (47 U.S.C. S307(d)) provides that the Commission can not grant renewal applications for common carrier stations sooner than 30 days prior to the expiration of the license term. Consequently, we would have to retain the early filed renewal applications in a pending status until such time as they could be granted. We believe that such retention would be administratively inefficient.

§ 22.147 Authorization conditions.

This rule sets forth the texts of conditions routinely placed on Public Mobile Services authorizations. The matter of conditional licensing of stations in the Paging and Radiotelephone Service raised significant attention in the comments and is discussed in the Report and Order. We changed the implementation date from that proposed to January 1, 1995.

§ 22.150 Standard pre-filing technical coordination procedure.

This section combines old §§ 22.100(d)(1)-(d)(11) and 22.501(m)(4), which were in turn based upon old § 21.100(d). It applies only to 2 GHz microwave and Hawaiian Inter-Island stations. The 2 GHz microwave channels are within the newly allocated Emerging Technologies Band, consequently the approximately 450 Public Mobile Services stations currently authorized to use them may have to relocate to other fixed bands in the future. To our knowledge, there are no authorized Hawaiian inter-island stations. In 1990, we proposed to expand the applicability of this general procedure to virtually all Paging and Radiotelephone Stations. See Amendment of Part 22 of the Commission's Rules to Require the Prior Coordination of Public Land Mobile Service Applications, (Notice of Proposed Rule Making) in CC Docket No. 90-76, 5 FCC Rcd 1662 (1990). The comments filed in response to that notice by and large opposed the prior coordination proposal. However, we note that we recently adopted this type of rule for use in the Personal Communications Services under Part 24 and we may in the future propose to apply this section to other selected categories of Public Mobile Services stations, if appropriate, to coordinate channel usage.

§ 22.157 Distance computation.

No comments address this new section; we adopt it as proposed.

§ 22.159 Computation of average terrain elevation.

This section replaces old § 22.115. Various commenters suggested that we modify paragraph (c) to allow the use of actual data in Dade and Broward counties, Florida, in lieu of the default value of 3 meters (10 feet). We agree and have made the default value optional.

§ 22.161 Application requirements for ASSB.

This section replaces old § 22.104(a)(3). No comments address this section except in regard to the definition of "channel" proposed in new § 22.99. We adopt it as proposed.

§ 22.163 Minor modifications to existing stations.

This section replaces old §22.9(d), the rule that allows licensees to make certain minor modifications to their stations without obtaining prior approval. In the NPRM, we proposed to eliminate the requirement that licensees notify us of these modifications. The Report and Order discusses fully the adoption of this proposed rule.

In addition, we made some editorial changes. We changed the words "Canadian border" in paragraph (b) to "international borders" so that we

could include any relevant provisions from agreements with Mexico as well. In paragraph (c), we changed "Antenna Survey Branch" to "Special Services Branch," and changed the address accordingly. These changes are due to an internal reorganization of the Commission's functions.

§ 22.165 Additional transmitters for existing systems.

This new section replaces old § 22.117(b) and (c), which allowed licensees to add new "internal" transmitters to an existing system without obtaining prior approval. As with new § 22.163, we proposed in the NPRM to eliminate the requirement that licensees notify us of these new transmitters. The comments and conclusions with respect to this rule section are discussed fully in the Report and Order.

We provide the following explanation of additional minor changes we made to the proposed rule. In paragraph (a), we replaced the words "Canadian border" with "international borders," for the same reason given with regard to new § 22.163. We also add language to paragraph (a) to indicate that transmitters can be added in areas near international borders pursuant to this section, if allowable under the applicable international agreement. In paragraph (b), we change "Antenna Survey Branch" to "Special Services Branch," and changed the address accordingly. These changes are due to an internal reorganization of the Commission's functions. In the first sentence of paragraph (e), we add the phrase "except that the service area boundaries may extend beyond the market boundary into area that is part of the CGSA or is already encompassed by the service area boundaries of previously authorized facilities." This reflects our current practice. In paragraph (f), we correct the phrase "pursuant to this section" to read "pursuant to § 22.859 of this part".

§ 22.167 Applications for assigned but unused channels.

This proposed section concerned "finders' applications". As discussed in the Report and Order, Report, we do not adopt this proposed rule section.

§ 22.169 International coordination of channel assignments.

This new section codifies the general requirements for coordination of channel assignments with the administrations of other countries and with the International Frequency Registration Board (IFRB).

Subpart C - Operational and Technical Requirements

OPERATIONAL REQUIREMENTS

§ 22.301 Station inspection.

This rule replaces old § 22.200. We adopt it as proposed.

§ 22.303 Retention of station authorizations; transmitter identification.

This revision of old § 22.201 provides that the current authorization of each station must be retained as a permanent part of the station records and that a clearly legible photocopy of the authorization must be available at each regularly attended control point of the station. In addition, we proposed to require that the station call sign be clearly and legibly marked on every transmitter, other than mobile transmitters, of the station.

Joint Commenters recommend that we delete the word "posting" from the proposed headnote because license documents need not be posted. They also suggest that we require licensees to retain (1) complete information on any modifications effectuated without notice to or prior consent of the Commission; and (2) requests to the Commission seeking corrections of outstanding authorizations. In addition, Joint Commenters recommend that licensees be permitted to retain authorization information at a central location, if such location is easily discernable from information available at each control point of the station. They also suggest that licensees be required to mark every transmitter with information identifying the licensee, contact information, frequency, and the effective radiated power (ERP) of the facility. GTE believes that requiring that transmitters be marked does not take into account the fact that transmitters are often switched out of a particular system and used in other locations. They recommend that licensees be allowed to identify transmitters by means other than transmitter markings.

It is true that we no longer require licensees to post copies of station authorizations. Therefore, we are revising the headnote to substitute "Retention" for "Posting." We agree that licensees should be required to retain complete information with respect to their facilities as a part of their station records and we are adding language to clarify this. We agree with Joint Commenters that carriers should be allowed to retain authorization information at one location. Therefore, we are adding a sentence to indicate that, in lieu of a photocopy of the current authorization, licensees may instead make available at each control point the

address or location where the licensee's current authorization may be found.

The purpose of requiring the marking of transmitters is to facilitate on-site identification of the licensee should this become necessary. Often, the transmitter of a Public Mobile Services licensee may be housed in the same closet with similar-looking equipment belonging to other public, private and/or government land mobile licensees. In such situations, marking the call sign on the transmitter makes it possible to readily identify the licensee. It would be a violation of this rule if our field representatives were to visit such a site and be unable to readily determine the call sign (and thus the identity of the licensee) of a Public Mobile Services transmitter. As with many of our rules, a common sense interpretation must be applied. In situations where the identity of the Public Mobile Services licensee is obvious, the rule would not be enforced. For example, in the Cellular Radiotelephone Service, where the name of the cellular carrier is clearly marked on or in the transmitter building at a cell site and the building does not contain transmitters of other licensees, we certainly would not expect the licensee to mark the cellular system's call sign on each of 30 cellular channel transmitters installed together in a rack inside the building.

In any event, it is not necessary that Public Mobile Services transmitters be marked with more than the station call sign. The call sign enables us to readily identify the licensee, and unlike the suggested additional information, it is rarely changed, minimizing the burden on the licensee of keeping the marking current.

§ 22.305 Operator and maintenance requirements.

This rule is a simplification of old § 22.205. The details of provisions to be included in maintenance contracts were removed. The essential principle remains -- that station licensees themselves (and not, for example, individuals who operate or maintain the station) are held responsible by the Commission for the proper operation and maintenance of Public Mobile Services stations.

§ 22.307 Operation during emergency.

The new rule, based on old § 22.210, states that licensees in the Public Mobile Services may, during an emergency in which normal communications facilities are disrupted as a result of hurricane, flood, earthquake, or disaster, use their stations to temporarily provide emergency communications in a manner not currently authorized provided that such service complies with the stated technical limitations. Southwestern Bell claims that this rule as proposed is too narrowly drawn in that it does not take into account man-made disasters. It recommends that the rule also include civil unrest, widespread vandalism, national emergencies, and emergencies declared by Executive Order. We agree and modify the rule to this effect.

§ 22.313 Station identification.

This rule is based on old § 22.213. Telocator recommends licensees be allowed to postpone station identification if there is public communication waiting to be sent. Telocator also contends that licensees should be able to defer the station identification until after the busy hour(s) because of the high value of capacity during that time.

In establishing station identification procedures, we must balance the inconvenience for licensees of transmitting their station call sign against the inconvenience for our monitoring personnel and others concerned with determining the source of transmissions or having to wait an extended period for the call sign to be sent. Although there may be some merit in the suggestions made by Telocator, there is not sufficient discussion in the record on alternative station identification procedures for us to base a decison to amend the rule along those lines in this order. We solicited comments on station identification procedures in the Further Notice of Proposed Rule Making in GN Docket No. 93-252 and we may make additional changes to this rule based on that record.

For various reasons, some Paging and Radiotelephone Service licensees' wide-area paging systems now have several different call signs assigned to various individual transmitters and groups of transmitters within the system (see discussion of new § 22.507). Because transmitting multiple call signs to identify a system would waste air time (one call sign is sufficient to identify the licensee), we have routinely waived the old station identification rule to allow licensees to transmit just one of its assigned call signs (see the discussion of proposal in our NPRM at 7 FCC Rcd 3658,3668). We are adopting our proposal to allow Paging and Radiotelephone Service licensees to transmit just one, rather than all, of the assigned call signs in a system (see new § 22.313(c)(3)). This will eliminate the need to routinely grant waivers of this rule.

We added a new paragraph (a)(4) exempting rural subscriber stations using BETRS in the Rural Radiotelephone Service from the general station identification rule, as suggested by International Mobile Machines (IMM). These fixed subscriber stations use digital emissions and thus the subscriber has no means to comply with the rule.

§ 22.315 Duty to respond to official communications.

This rule is based on old § 22.302. We adopt it as proposed.

§ 22.317 Discontinuance of station operation.

This rule is a rewording and clarification of old § 22.303. We adopt it as proposed.

§ 22.321 Equal employment opportunities.

This rule is based on old § 22.307. We changed the deadline in the Note following paragraph (b) from May 31, 1993 to May 31, 1995. Otherwise, we adopt the rule as proposed.

§ 22.323 Incidental communications services.

This section is a rewording of old § 22.308. We adopt it as proposed.

§ 22.325 Control points.

This section replaces and simplifies old §§ 22.515 and 22.909, using language taken from the latter section. We modified the proposed rule by adding a sentence clarifying that the person who is on duty and responsible for station operation does not necessarily have to physically remain at the control point at all times or monitor all transmissions of the station continuously. We remind Public Mobile Services station licensees, however, that they are nevertheless responsible for proper operation of their stations at all times (see old § 22.205 and new § 22.305), including those times when the person responsible for proper station operation is not at the control point or is not monitoring transmissions.

TECHNICAL REQUIREMENTS

§ 22.351 Channel assignment policy.

This section, based on old § 22.100(a), sets forth the general principles that Public Mobile Services channels are assigned exclusively in a manner intended to facilitate rendition of service on an interference-free basis in each service area, and that licensees must cooperate in the selection and use of channels in order obtain the most efficient use of the spectrum. We adopt this section as proposed.

§ 22.352 Protection from interference.

This section, based on old § 22.100(b), states that public mobile service stations are authorized to operate on a non-interfering basis. This refers to our technical channel assignment criteria (see, e.g., new § 22.537), which are intended to prevent co-channel interference. It also lists other types of interference against which protection is not afforded by Part 22 of our rules.

Radiophone reminds us that 316 of the Act prohibit the Commission from modifying the terms of an authorization without affording an opportunity for hearing. We agree and clarify this point by changing the second sentence in the introductory paragraph to the effect that the Commission may require modifications after the licensee has received "notice and opportunity for hearing."

PageNet recommends that we add another category that affords interference protection to fixed station and base station receivers from control and repeater stations operating on adjacent channels. In Flexible Allocation of Frequencies in the Domestic Public Mobile Service for Paging and Other Services (Flexible Allocation), 4 FCC Rcd 1576 (1989), we decided to allow co-primary fixed (control and repeater) use of the channels designated for use by base and mobile stations. Pagenet is correct that we should mention the interference potential this "flexibility" gives rise to. Accordingly, we revise paragraph (c)(1) to include interference to base receivers from fixed stations. Paragraph (c)(4) already encompasses interference to fixed receivers from any source.

We add a new paragraph (c)(6) stating that, unless notification is filed, facilities modified or installed pursuant to new §§ 22.163 and 22.165 are not protected from interference. We proposed this in connection with the revision of §§ 22.163 and 22.165 in the NPRM at 7 FCC Rcd 3667 (1992). In general, such stations would not be expected to experience interference because of the presence of surrounding protected facilities of the same licensee or because of other factors. It would be unreasonable, however, to hold applicants or licensees responsible for assessing the potential for interference to facilities for which there is no public record. Likewise, it would be unreasonable to hold applicants and licensees responsible for interference studies leading to incorrect conclusions because the technical parameters contained in our station files, upon which these studies are based, are not current.

§ 22.353 Blanketing interference.

This section is based on old § 22.100(e). We adopt this section as proposed.

§ 22.355 Frequency tolerance.

This section is based on old § 22.101. In the proposed rule, we deleted the paragraph requiring licensees to employ a "suitable method" for measuring transmitter frequency. As long as public mobile stations are operated in compliance with the tolerances indicated, it does not matter whether the licensee or someone else measures the frequency. Today, transmitter frequency is measured with digital frequency counters. Most of these counters have a time base accuracy of ±1 part-per-million (ppm) or better, which is generally adequate to ensure compliance with this rule section. Also as proposed, we specify the tolerances in ppm.

§ 22.357 Emission types.

This section is based on old § 22.104, paragraphs (a)(1), (a)(2), (a)(4) and (b). We add a new paragraph authorizing by rule the use of emission type 20K0D7W for BETRS stations.

§ 22.359 Emission masks.

This section is based on old § 22.106, and contains the technical specifications for emission masks common to two or more of the Public Mobile Services. We adopt it as proposed.

§ 22.361 Standby facilities.

This section restates old § 22.107. Joint Commenters recommend that we add the phrase "without further authority from the Commission". We find this unnecessary because the rule already states that standby facilities may be installed "without obtaining separate authorization."

§ 22.363 Directional antennas.

This section replaces old § 22.108 and provides standards for directional antennas. We adopt it as proposed.

§ 22.365 Antenna structures; air navigation safety.

This section restates old § 22.109. GTE recommends elimination of the marking, lighting, and maintenance requirement for licensees whose antennas are located on structures that they do not own or control. Bell Atlantic, Claircom, Radiophone, and United States Telephone Association (USTA) make like recommendations that licensees who use a shared tower, enter into tower and antenna maintenance contracts, or are otherwise not the owners or operators of the tower not be held responsible for the lighting, marking, and maintenance. Bell Atlantic, Claircom, and USTA recommend that this rule be modeled after § 73.1213 of the rules governing broadcast stations, which allows licensees sharing a tower to designate one licensee to be responsible for tower lighting, marking, and maintenance. NewVector recommends that we add an exception to this section for "in-building radiation systems" which are completely shielded and do not present a danger to air navigation.

We hold each Public Mobile Services licensee individually responsible for complying with tower marking, lighting, and maintenance requirements. Even under § 73.1213 of our rules, if a designated licensee defaults on the responsibility for marking and lighting a tower, we hold each licensee individually responsible for compliance. Nothing in new § 22.365 prevents licensees from entering into agreements of the type described in § 73.1213, whereby one designated licensee assumes the duties of maintaining a shared antenna structure in compliance with Part 17 of our rules. We decline to add an exception for in-building radiation systems; these are already exempted from FAA notification under § 17.14 of our rules.

§ 22.367 Wave polarization.

This section is based on old § 22.110. Although no substantive changes were proposed, the proposed rule nevertheless received some attention in the comments. PageNet suggests that we allow either vertical or horizontal polarization to be used for fixed stations transmitting on channels above 900 MHz. McCaw and NewVector ask that we allow either horizontal or vertical polarization in the cellular service. IMM suggests that horizontal polarization be specified for BETRS stations at 450 MHz to reduce the likelihood of interference between BETRS stations and stations using the same channels in the Paging and Radiotelephone Service.

First, we are changing the headnote to reflect the fact that it is the polarization of the emitted radio wave, rather than the antenna, that is relevant. This rule specifying wave

polarization is important for several reasons. First, operating with crossed polarizations significantly reduces the probability of interference between facilities using the same or adjacent spectrum for different purposes. This is why vertical polarization is specified for stations in the Offshore Radiotelephone Service and for fixed stations in the 72-76 MHz band (to protect horizontally polarized TV reception), and horizontal polarization is specified for most stations in the Rural Radiotelephone Service, including all BETRS stations (for protection from vertically polarized paging base stations). A second reason is the accomodation of common antenna designs. The vast majority of mobile stations operating in the VHF and UHF spectrum employ cost effective whip antennas that radiate a vertically polarized wave. Specifying vertical polarization for services with mobile transmitters also promotes interoperability. For these reasons, vertical polarization is specified for stations in the Paging and RadioTelephone Service, the Cellular Radiotelephone Service, and for general aviation stations in the Air-ground Radiotelephone Service. Finally, we clarify the wording of paragraph (a) and change the word "stations" in paragraph (a)(1) to read "transmitters."

§ 22.368 Quiet Zones.

This section is based on old § 22.113. GTE notes that there are paragraph numbering errors which should be corrected. We do so. Otherwise, we adopt the rule as proposed.

§ 22.371 Disturbance of AM broadcast station antenna patterns.

In the NPRM, we proposed this new rule to codify our current policy that Public Mobile Services licensees who construct or modify towers in the immediate vicinity of AM broadcast stations are responsible for installing and maintaining any detuning apparatus necessary to correct any disturbance caused by their towers to the AM station radiation pattern.

Telocator, New Par, and R.L. Biby Communications Engineering Services are concerned that the proposed rule might be used to hold Part 22 licensees responsible for AM facilities' problems thPart 22 licensees have not caused. Telocator recommends that we clarify that Part 22 licensees are responsible only for correcting the distortion caused by their construction and do not bear the burden of remedying problems caused by other sources that may distort AM broadcast patterns. New Par comments that direct attribution can be determined by comparing before and after measurements. R. L. Biby suggests that the rule allow alternatives to before and after measurements to be used, such as mathematical analysis and signal strength measurements.

In Public Notice, Mimeo No. 582 (released November 14, 1989), we stated that "[w]hether by imposition of specific conditions or by operation of law, a licensee building a new facility is obligated to take all the necessary steps to correct interference problems caused by new or modified construction." This position is supported by existing case law. See, e.g., Subrink Broadcasting of Georgia, 65 FCC 2d 691 (1977); Athens Broadcasting Co., 68 FCC 2d 920 (1978); B&W Truck Service, 15 FCC 2d 769 (1986). Although Public Mobile Services licensees are responsible for correcting the harm they cause, they are not responsible for fixing all problems with the AM station that may have existed before the Public Mobile Services licensee constructed the tower. Public Mobile Services licensees are, nevertheless, expected to reasonably cooperate with broadcast licensees in restoring AM patterns to the licensed parameters.

The comments persuade us to modify the rule in one respect. Although we believe before and after measurements are a feasible way to determine whether a pattern distortion results from a particular tower construction, the proposed rule is too specific concerning measurement techniques. Accordingly, we are rewording the rule to refer to the measurements in more general terms. Requirements for measurement techniques for AM stations are provided in Part 73 of our rules.

§ 22.373 Access to transmitters.

This rule is a restatement of old § 22.117(a). Southwestern Bell is concerned that, for small transmitters installed in walls or ceilings of a customer's premises, it may be impossible to comply with paragraph (a). As a practical matter, these small transmitters can not be installed in such a way that would ensure that unauthorized persons could not gain access to them. Southwestern advises, however, that compliance with paragraph (b) should be sufficient, in these cases, to prevent interference. We agree, and add an exception to paragraph (a).

§ 22.375 Use of transmitters in other services prohibited.

This rule would have replaced old § 22.119, which prohibited the licensing or use of transmitters licensed in the Public Mobile Services for any "non-common carrier communication purposes." The proposed rule would have prohibited the use of transmitters licensed in the Public Mobile Services in any radio service other than a Public Mobile Service.

The Budget Reconciliation Act of 1993, contains provisions affecting the regulatory status of land mobile stations generally (i.e. whether these stations are to be regulated as common carriers or as a private radio service or some combination of both). The Commission, in compliance with this legislation, has issued a Second Report and Order in GN Docket No. 93-252, 9 FCC Rcd 1411 (1994), addressing, among other things, the regulatory status of all land mobile stations. This order determined that certain types of stations that were licensed under Part 90 as private mobile radio stations will be reclassified as commercial mobile radio stations. Moreover, there may also be transmitters licensed on channels currently available under Part 90 that provide both private and commercial mobile radio service. These developments, in effect, render the old prohibition on the licensing and use of transmitters obsolete.

We recently issued an NPRM in CC Docket No. 94-46 (FCC 94-113), proposing to remove old § 22.119 from our rules and allow concurrent licensing of transmitters in the common carrier and private services. That docket has been folded into this proceeding and is discussed in the Report and Order. Since we are removing old § 22.119 from our Rules, proposed § 22.375 was not adopted. This means that transmitters (equipment) licensed under Part 22 may also be concurrently licensed and used under other parts of the rules, e.g. Part 90 on channels available under those parts. However, it does not mean that channels available under Part 22 may be used to provide a non-common carrier service.

§ 22.377 Type-acceptance of transmitters.

This rule replaces old § 22.120. We add language to paragraph (d) to emphasize that, in regard to type-acceptance of cellular mobile equipment, the technical standards of Part 22 include new § 22.919 concerning the security of Electronic Serial Numbers.

§ 22.379 Replacement of equipment.

This rule replaces old § 22.121. In the proposed rule, we removed the requirement that licensees notify the Commission, in the next application for renewal or modification of authorization, that the equipment was replaced. We have no need for this information. USTA agrees that licensees should be allowed to replace equipment without authorization, but believes that immediate notification should be required, except in the case of decreases in ERP and antenna height above average terrain (HAAT), in which case notification should be required within 60 days after the change is completed. This suggestion is inapposite, because this section applies only to equipment replacement where ERP and HAAT are not changed.

§ 22.381 Auxilliary test transmitters.

This rule replaces old § 22.524. We adopt it as proposed.

§ 22.383 In-building radiation systems.

In paragraph (g) of proposed §22.537, we referred to the fact that licensees could install and operate in-building radiation systems without receiving approval from the Commission. We now note that, in the Paging and Radiotelephone Service, these systems could be used on the channels designated for one or two-way mobile operation as well as those designated for one-way paging. Moreover, these systems could be used in other Public Mobile Services, such as the Cellular Radiotelephone Service. Additionally, this topic attracted more interest from commenters than we had anticipated. Therefore, we are establishing a new separate section, in Subpart C, to address in-building radiation systems.

PageNet recommends that in order to qualify as in-building radiation systems, transmitters should be limited to an ERP not in excess of 50 watts, with antenna tip installed at or below ground level. PageNet also proposes that the rule should address leaky coaxial cable installation specifically, limiting the maximum ERP to 1 watt and the service area to no more than one mile.

We agree with the commenters that additional technical specifications for in-building radiation systems may be necessary, particularly in light of our recent adoption of more stringent radio frequency exposure limits. We believe, however, that further comment is necessary, and we will address this subject in a further notice.

Subpart D - Developmental Authorizations

§ 22.401 Description and purposes of developmental authorizations.